IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION NO. 192 OF 2003

MR.NAMDEV VITHAL KALANGUTKAR, SIOLIM-GOA. ....Applicants

Versus

MR.SIMON CAJETAN FERNANDES AND ORS., ...Respondents

SHRI J.P. MULGAONKAR,

Coram:- F.I.REBELLO, J.

Date:- 7th August, 2003

A suit was filed in which the present applicant acted as power of attorney of the plaintiff in suit no.99/97/B. A compromise came to be filed signed by the present applicant acting as power of attorney on behalf of the original plaintiff. In terms of the said consent terms, the power of attorney i.e. the appellant herein agreed that he would pay the amount of Rs.3,00,000/- to the defendence on behalf of the plaintiff towards all the rights the defendants had in the suit property, in view of the sale deed dated 24th May, 1979. The case of the respondents is that the applicant paid a sum of Rs.1,00,000/- and defaulted in paying the balance amount, pursuant to which proceedings in execution were instituted. Attachment of the property which was the subject-

matter of the earlier suit and now purportedly purchased by the applicant herein was sought. That property was attached in execution. The applicant resisted the attachment on the ground that the property belonged to him and consequently, it could not be attached. That objection has been rejected by the trial Court on the ground that it was a clear case of fraud being perpetuated by the applicant herein.

Admittedly, there is a decree against the original plaintiff on whose behalf the applicant was acting as power of attorney. Futhermore, it is the applicant who agreed to pay the amount in favour of the decree-holders, the present respondents. In these circumstances, though the decree is against the original plaintiff, non-the-less it is the present applicant who put himself in a position to satisfy the decree. In these circumstances, in my opinion, this would not be a fit case to grant any interim relief.

Hence the Civil Application is rejected.

F.I.REBELLO, J.